IN THE SUPREME COURT OF THE UNITED STATES

RECEIVED
JAN 26 1983
OFFICE OF THE CLERK
SUPREME COURT, U.S.

NO. 82-6089

Supreme Court, U.S.
FILED
JAN 24 1983
Alexander L. Stevas, Clerk

TIMOTHY EUGENE MORRIS

Petitioner

vs.

TENNESSEE
WILLIAM M. LEECH

Attorney General and Reporter

ROBERT L. JOLLY
Assistant Attorney General
Nashville, Tennessee

Respondent.

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES SUPREME COURT

WILLIAM H. BELL
101 West Depost Street
Greeneville, Tennessee 37743
(615) 639-7279

PETITION FOR WRIT OF CERTORARI

Questions Presented For Review

(1) Whether Petitioner was denied his Fifth Amendment, Sixth Amendment, and Fourteenth Amendment rights under the Constitution of the United States in that the trial court failed to exclude two (2) statements given by the defendant, without an attorney present.

Table of Contents

	Page
Table of Authorities	3
List of Opinions Delivered Below	4
Statement of the Grounds for Jurisdiction	4
Constitutional Provisions and Statutes	4
Statement of the Case	4
Argument	7,9
Conclusion	11
Certificate of Service	11
Appendix	12

Table of Authorities

Cases

	PAGE
Angersinger v. Howard 407 U.S. 25, 92 S.Ct. 2006 , 32 L. Ed. 2d 530 (1972)	10
Chapman v. California 368 U.S. 18, 87 S.Ct. 824, 17 L. Ed. 2d 705 (1967)	10
Gideon v. Wainwright 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799 (1963)	10
Holloway v. Arkansas 435 U.S. 475, 98 S.Ct. 1173, 55 L.Ed. 2d 426 (1978)	10
Houston v. State 593 S.W. 2d 267.	10
Lego v. Twomey 404 U.S. 477, 30 L. Ed. 2d 618, 92 S. Ct. 619 (1972)	9
Lowe v. State (Tn. Crim.) 684 S.W. 2d 239 (1979)	8
McPhearson v. State (Tn. Crim.) 562 S.W. 2d 210 (1977)	9
Miranda v. Arizona 384 U.S. 426, 16 L. Ed. 2d 694, 86 S. Court 1602, 10 A.L.R. 3d 974 (1966).	8
Pyburn v. State (Tn. Crim.) 639 S.W. 2d 835 (1975)	8
State v. Morris S. Ct. No. 16, (641 S.W. 2d 883)	4
State v. Pritchett 621 S.W. 2d 127, (1981)	9
United States v. Wade 388 U.S. 218, 87 S.Ct. 1926, 18 L.Ed. 2d 1149 (1967)	10

STATUTES

United States Constitution Fifth Amendment.	4
United States Constitution Sixth Amendment	4
United States Constitution Fourteenth Amendment	4
28 U.S.C. § 1257 (3).	4

List of Opinions Delivered Below

Conviction affirmed on appeal State v. Morris, S. Ct. No. 16, (641 S.W. 2nd 883). Petition for rehearing denied State v. Morris, S. Ct. No. 16 (November 29, 1982).

Statement of Grounds for Jurisdiction

This is an appeal from a judgment of the Supreme Court of Tennessee at Knoxville. Judgment decided and filed on October 12, 1982. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1257(3).

Constitutional Provisions and Statutes

1. The Constitution of the United States, Amendment V provides that no person
   "Shall be compelled in any criminal case to be a witness against himself . . ."

2. The Sixth Amendment to the Constitution provides in a relevant part:
   In all criminal prosecutions, the accused will enjoy the right . . . to have the assistance of counsel for his defense.

3. The Fourteenth Amendment to the Constitution of the United States provides in its part:
   "Nor shall any state deprive any person of life, liberty, or property, without due process of law . . ."

Statement of the Case

Timothy Eugene Morris seeks a writ of certiorari from this Court to the Supreme Court of Tennessee, Knoxville, Tennessee, to review a decision of that Court imposing the death penalty upon Timothy Eugene Morris.

In the early part of June, 1980, the Appellant left

Florida with two (2) other people in a car belonging to Terral Anderson. They were traveling North when they were stopped by the authorities for a problem with registration in Crossville, Tennessee, on June 11, 1980. There, the car was impounded and the three of them were escorted to the Kentucky/Tennessee state line. From there, they hitchiked through Illinois and Indiana. Eventually , the Appellant and Terrel Anderson reached Nashville on or about June 19, 1980. There, Morris and Anderson separated. While in Nashville, Morris wrote a letter to Becky Bladow, telling her that he planned to purchase a motorcycle and would be back in Florida in the near future.

Morris said he met Hunter Tait on the street, in Nashville, Tennessee in the latter part of June 1980. They left Nashville together, and traveled to various state parks for approximately a week. Morris accompanied Tait to the Towsend, Tennessee Arts and Crafts Festival, where he assisted Tait in his craft booth. The two remained at the fair through Sunday and left early Monday morning, the first day of July, 1980.

Morris testified that on Sunday night of the previous day, Tait offered to sell Morris his truck for some $50.00, and that Monday morning (the first of July) Tait told Morris he was going to the Bahamas for a few days. Tait said he was to be picked up by some friends at a spot on the road, just below Townsend.

Morris said he drove away in the truck he purchased from Tait, which contained all of Tait's goods, leaving Tait sitting on a rock by the creek. Morris admitted that Tait was probably not aware that all his goods has been taken with the truck.

From there, Morris went to visit his relatives in Weaverville, North Carolina, where he stayed approximately one (1)

day. There, he gave away various items of the stained glass merchandise which were in the truck. Then he headed south to Florida.

Shortly after he crossed the Florida state line, he was pulled over by an officer with the State Agricultural Inspection station. Once he was in Florida, Morris forged several checks in the name of Hunter Tait, having found a check book in the cab of the truck.

On July 6, 1980, a body was found on Rich Mountain in Greene County, Tennessee. Although the body was badly decomposed, identification was made through the comparison of fingerprints. Agent Bob Baird of the Tennessee Bureau of Investigation learned that the last person seen with Hunter Tait was the Appellant.

In August 1980, Morris was questioned by local authorities in regard to the whereabouts of Hunter Tait. This questioning was in response to a missing person report filed by Tait's mother. Early in September, the Appellant left Florida with his wife, a resident of Titusville, Florida, and headed west towards California, where his wife's parents lived. In route, he was apprehended at Sierra Blanca, Texas, a few miles inside the continental United States, where he was found asleep in his car. The arrest was in response to an indictment for First Degree Murder handed down by the Grand Jury of Greene County, Tennessee, in early September, of 1980.

When Morris was returned to Greene County, TBI agent, Bob Baird took his statement, after obtaining a waiver of his Miranda rights. Morris refused to sign the statement, which said in effect that Morris had traveled north with two other people,

had met Hunter Tait in Nashville, Tennessee, and had accompanied him to various state parks and to the Townsend Arts and Crafts Fair. The statement further said that Morris had bought Tait's truck for $50.00.

In denying the motion of the accused to supress this statement, the Court found that the statement was valid and should be allowed into evidence, even though the statement was unsigned, was in Agent Bob Baird's handwriting, was unwitnessed, and was taken despite Appellant's repeated request for the presence of an attorney. The state admitted that its entire case was circumstantial.

Appellant, Timothy Eugene Morris, was convicted in the Criminal Court of Greene County, Tennessee of murder in the first degree of Hunter Tait. He was sentenced to death by electricution. Appeal was taken directly to the Supreme Court of Tennessee as provided by in statute, T.C.A. 39-2406. After review of the trial record, the sentence and the briefs on appeal, the Supreme Court of Tennessee affirmed the judgment of the Trial Court. The Appellant petitioned for the Supreme Court of Tennessee to Rehear, the Petition to Rehear was denied on November 29, 1982.

ARGUMENT

The Appellant was questioned in a trailor in Jacksonville, Florida, by Detective Henry Hines and two (2) uniformed officers. Detective Hines states that the defendant was given no Miranda warnings. Detective Hines stated that the Defendant appeared to be "hung over and tired". He further testified that the Defendant did " . . . appear to be tired or fatigued and appeared like he had something to drink the previous night." The Defendant said he had absolutely no recollection of being

interviewed by Detective Hines. The Defendant testifies that he had been drinking heavily the night before, and was in fact drinking at the time.

Intoxication in combination with fatigue can militate against finding a statement admissable in that it was not knowingly and intelligently made. As a general rule the proof about one who makes statements, concerning a crime while one is intoxicated, goes to the weight and credibility to be accorded to the confession. Pyburn v. State, (Tn. Crim) 539 S.W. 2d 835 (1975). The Appellant admits that alcohol intoxication is merely a factor in determining voluntariness. Lowe v. State, (Tn. Crim.) 584 S.W. 2d 239 (1979). The Appellant contends that his intoxication was so pronounced that his statement to Detective Hines should be excluded.

The second statement was given on September 6, 1980 to Tennessee Bureau of Investigation's agent, Bob Baird. The alleged statement was taken at the Greeneville Police Department. The Defendant was under arrest at the time. He was already indicted. There was no attorney present. The Defendant signed a standard Miranda waiver. The Defendant refused to sign the statement. The Statement was in Agent Bob Baird's handwriting, not the Defendant's. There were no witnesses present. There was no tape recording of the conversation. The Tennessee Bureau of Investigation's agent Bob Baird, said the Defendant did not request an attorney during the interview. The Defendant said that he did request an attorney repeatedly through out the interview. The mere fact that the Appellant signed a waiver of rights and allegedly answered some questions of Agent Bob Baird's does not derogate the Defendant's right to stop the interview at any point by demanding an attorney. Miranda v. Arizona, 384 U.S. 426, 16 L.

Ed. 2d 694, 86 S. Court 1602, 10 A.L.R. 3d 974 (1966). An accused may waive his Miranda rights, but the burden is on the State to establish that the waiver was voluntary. McPhearson v. State, (Tn. Crim.) 562 S.W. 2d 210 (1977). The burden is upon the prosecution to show that the confession was voluntary before it can be received into evidence if objection is made to its introduction. Lego v. Twomey, 404 U.S. 477, 30 L.Ed. 2d 618, 92 S.Ct. 619 (1972). In the present case the only evidence that Agent Bob Baird can produce to carry his burden of proof is that the Defendant signed a Miranda rights waiver. As has been previously shown, there was no tape recording as there was in State v. Pritchett, 621 S.W. 2d 127, (1981). There were no witnesses as there was in Houston v. State, 593 S.W. 2d 267, (1980). There was no lawyer. The statement was not signed and it was in Agent Bob Baird's handwriting. The Defendant testified that he repeatedly asked Bob Baird for a lawyer. All points considered, this is extremely odd behavior for a trained agent for the State. If ever a set of circumstances demonstrated the State's failure to carry a Lego burden, this is it. The Defendant by demanding an attorney, and this demand not being met, during interrogation, denied the Appellant's Fifth Amendment right against self-incrimination, and his Sixth Amendment right to counsel, as applied to the State's via Fourteenth Amendment, to the United States Constitution.

Argument

A Defendant's right to effective assistances of counsel, guaranteed by the Sixth Amendment to the United States Constitution, adheres to every critical stage of a criminal proceeding.

United States v. Wade, 388 U.S. 218, 87 S.Ct. 1926, 18 L.Ed. 2d 1149 (1967).

In Chapman v. California, 368 U.S. 18, 87 S.Ct. 824, 17 L.Ed. 2d 705 (1967), this Court stated the rules to be applied in determining whether constitutional error occuring during a criminal proceeding is harmless. The Court recognized that "there are some constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error". Id. 368 U.S. at 24, 87 S.Ct. at 827-28. The right to counsel, as established in Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799 (1963), was noted as one such basic right. Id. 368 U.S. at 24 n. 8, 87 S. Ct. at 828.

Although the case of Angersinger v. Howard, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed. 2d 530 (1972), dealt with misdemeanants facing jail sentences upon conviction, the U.S. Supreme Court stated that the right to counsel is fundamental to a fair trial 407 U.S. at 32, 92 S.Ct. at 2010. This concept was restated by the Court in Holloway v. Arkansas, 435 U.S. 475, 98 S.Ct. 1173, 55 L.Ed. 426 (1978) wherein the Court held:

> "This Court has concluded that the assistance of counsel is among those 'constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error' . . . Accordingly, when a defendant is deprived of the presence and assistance of his attorney, either throughout the prosecution or during a critical stage in, at least, the prosecution of a capital offense, reversal is automatic." Id. 435 U.S. at 490, 98 S.Ct. at 1181 (citation omitted.)

The petitioner respectfully submits that under the evolving precedents of this Court the right to remain silent and against self-incrimination, and the right to counsel, are rights so basic to a fair trial that their infraction at any critical stage in the criminal process, particularly a custodial interrog-

ation, works such a prejudice against the Defendant as to deny the Defendant his Constitutional rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

Conclusion

For the reasons stated herein, Timothy Eugene Morris, respectfully asks that a writ of certiorari issued to review the decision of the Tennessee Supreme Court, below.

BY: W. H. Bell

WILLIAM H. BELL
101 West Depot Street
Greeneville, Tennessee 37743
(615) 639-7279

CERTIFICATE OF SERVICE

I, WILLIAM H. BELL, hereby certify that a copy of the foregoing Petition for Writ of Certiorari to the United States Supreme Court has been forwarded by United States Mail, postpaid, this the 24 day of January, 1983, upon William Leech, Attorney General, 450 James Robertson Parkway, Nashville Tennessee 37219.

BY: W. H. Bell

WILLIAM H. BELL